



STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

Date Introduced:	04/15/02	Bill No:	SCA 13
Tax:	Local taxes	Author:	Alarcon
Board Position:		Related Bills:	SCA 5 (Torlakson)

BILL SUMMARY

This bill, a constitutional amendment that would require statewide majority voter approval prior to going into effect, would authorize local governments, subject to majority voter approval, to impose a special tax to fund projects related to transportation and other local development. This bill would also authorize local governments, subject to majority voter approval, to incur indebtedness in the form of general obligation bonds to fund the construction of affordable housing and projects that facilitate transportation between employment sites and affordable housing for persons and families of low and moderate income.

This analysis will only address that part of the bill that could pertain to the State Board of Equalization

ANALYSIS

Current Law

Under Article XIII A, Section 4, of the California Constitution, cities, counties, and special districts, by a two-thirds vote of the voters of such districts, may impose special taxes, except ad valorem taxes on real property or a transactions tax or sales tax on the sale of real property within such districts.

Under Article XIIC, Section 1, subdivision (a), of the California Constitution, "General tax" means any tax imposed for general governmental purposes. Under Article XIIC, Section 1, subdivision (d), of the California Constitution, "Special tax" means any tax imposed for specific purposes, including a tax imposed for specific purposes, which is placed into a general fund.

The **Sales and Use Taxes Law** (Part 1, Division 2, Revenue and Taxation Code), provides that a sales tax is imposed on retailers for the privilege of selling tangible personal property at retail in this state. The use tax is imposed upon the storage, use, or other consumption of tangible personal property purchased in this state. Either the

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sales tax or the use tax applies with respect to all sales or purchases of tangible personal property, unless specifically exempted.

The **Bradley-Burns Uniform Local Sales and Use Tax Law** (Part 1.5, Division 2, Revenue and Taxation Code) authorizes counties to impose a local sales and use tax. The local sales tax is imposed on all retailers for the privilege of selling tangible personal property at retail; the local use tax is imposed on the storage, use, or other consumption of tangible personal property purchased from any retailer.

Currently, the statewide sales and use tax and local tax rate is 7.25 percent. Of the 7.25 percent base rate, 6 percent is the state portion and 1.25 percent is the local portion. The components of the statewide base sales/use tax rate of 7.25 percent are as follows:

- 5 percent state tax is allocated to the state's General Fund (Section 6051, 6051.3, 6201, and 6201.3 of the Revenue and Taxation Code);
- 0.50 percent state tax is allocated to the Local Revenue Fund which is dedicated to local government for program realignment (Section 6051.2 and Section 6201.2 of the Revenue and Taxation Code);
- 0.50 percent state tax is allocated to the Local Public Safety Fund which is dedicated to local governments to fund public safety services (Section 35 of Article XIII of the California Constitution);
- 1.25 percent local tax of which 1 percent is allocated to city and county operations and 0.25 percent is allocated for county transportation purposes and may be used only for road maintenance or the operation of transit systems (commencing with Section 7200 of the Revenue and Taxation Code).

As previously stated, under the Bradley-Burns Law, the local tax portion is fixed at 1.25 percent. All counties within California have adopted ordinances under the terms of the Bradley-Burns Law and levy the 1.25 percent local tax. Cities are also authorized to impose a sales and use tax rate of up to 1 percent, which is credited against the county rate so that the combined local tax rate under the Bradley-Burns Law does not exceed 1.25 percent.

Under the **Transactions and Use Tax Law** (commencing with Section 7251 of the Revenue and Taxation Code) counties are authorized to impose a transactions and use tax at a rate of 0.25 percent, or a multiple thereof, if the ordinance imposing such tax is approved by the voters. The transactions and use taxes are additional sales and use taxes imposed on the sale or use of tangible personal property. The maximum allowable combined rate of transactions and use taxes levied in any county may not exceed 1 ½ percent, with the exception of the City and County of San Francisco and the County of San Mateo, whose combined rates may not exceed 1 ¾ and 2 percent, respectively.

Section 7285 of the Transactions and Use Tax Law additionally authorizes counties to

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levy a transactions and use tax a rate of 0.25 percent, or multiple thereof, for general purposes with the approval of a majority of the voters. Section 7285.5 permits the board of supervisors of any county to levy a transactions and use tax at a rate of 0.25 percent, or multiple thereof, for specific purposes with the approval of two-thirds of the voters. Section 7288.1 also authorizes counties to establish a local public finance authority to adopt an ordinance to impose a transactions and use tax at a rate of 0.25 percent, or multiple thereof, for purposes of funding drug abuse prevention, crime prevention, health care services, and public education with the approval of two-thirds of the voters. Section 7286.59 authorizes counties to levy a transactions and use tax at a rate of 0.25 percent, or multiple thereof, for purposes of funding public libraries with approval of two-thirds of the voters.

Also, under the Transactions and Use Tax Law, through specific legislation, some cities and special districts have been authorized to levy a transactions and use tax for either a general tax or a special purpose tax. Currently, there are 34 districts (cities, counties, special districts) in California with tax rates ranging from 0.125 percent to 0.50 percent. The combined state, local, and transaction and use tax rates range from a low of 7.375 percent to a current maximum of 8.75 percent.

Court Decisions

Voters in San Diego and Monterey counties had passed measures to impose a transactions and use tax at a rate of ½ percent. Subsequently, in 1991 and 1992, these transactions and use taxes were declared unconstitutional by the California Supreme Court under the provisions of Proposition 13, because the measures, each of which imposed a special purpose tax, failed to get a 2/3 majority vote. In the decision, *Rider v. County of San Diego* (1991) 1 Cal.4th 1, the California Supreme Court held that the Agency (San Diego County Regional Justice Facility Financing Agency) was a special district and the transactions and use tax imposed was a special tax. Since the Agency was a special district and the transactions and use tax it imposed was special tax, the court ruled that the imposition of the tax violated Proposition 13 which requires approval of the tax by at least two-thirds of the voters.

In the decision, *Monterey Peninsula Taxpayers Association v. County of Monterey* (1992) 8 Cal.App.4th 1520, the California Supreme Court ruled that a tax adopted under Revenue and Taxation Code Section 7285.5 was in violation of Proposition 13. Revenue and Taxation Code Section 7285.5 (subsequently amended) had authorized a county to establish an authority for specific purposes that could levy a transactions and use tax with a majority voter approval. The court found that a tax adopted under Section 7285.5, without approval of two-thirds of the voters, violated Proposition 13. Sections 7285 and 7285.5 were amended (AB 1123, Ch. 251, 2001) to add language clarifying the following: (1) Section 7285 authorizes counties to levy a transactions and use tax for general purposes; and (2) Section 7285.5 deletes the necessity of forming an authority to levy a transactions and use tax for special purposes, and requires two-thirds voter approval of a special purpose tax.

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Proposed Law

This bill would add Section 16 to Article XI of the California Constitution to allow a local government, with the approval of a majority of its voters, to impose any special tax that is imposed exclusively for purposes of funding all of the following:

- 1) Transportation projects and services;
- 2) Acquisition of open-space land;
- 3) Financial incentives for the construction of affordable housing; and
- 4) Transportation enhancement activities, as defined.

The revenues derived from such tax shall be used for the above four purposes in equal amounts of 20 percent each.

“Special tax” would not include an ad valorem tax on real property or a transactions tax or sales tax on the sale of real property.

This bill would also amend Section 4 of Article XIII A, Section 2 of Article XIII C, and Section 3 of Article XIII D, to conform to the provision that adds Section 16 to Article XI.

This bill would also amend Section 18 of Article XVI, to add language authorizing a local government, with the approval of a majority of the voters, to incur indebtedness in the form of general obligation bonds for either of the following purposes:

- 1) The construction of housing at an affordable housing cost for persons and families of low and moderate income, if, prior to majority approval by the voters, the governing body of the local government adopts a resolution by a majority vote, that finds that there is a need for affordable housing; and
- 2) Projects that facilitate transportation for person of low and moderate income between employment sites and affordable housing.

This Constitutional amendment must be approved by a majority of California voters. Upon passage in the Senate and Assembly, this bill would be put on the next statewide ballot.

COMMENTS

- 1. Sponsor and purpose.** This bill is sponsored by the author in an effort to allow local governments to raise additional revenues for local development (i.e. various transportation projects and services, affordable housing, and acquisition of open-space land) by imposing a special tax or incurring indebtedness in the form of general obligation bonds, and lowers the voter approval requirement from a two-thirds vote to a majority vote. Although the revenues are to be used for various local development projects, the main intent of the bill is to provide funding for affordable housing. According to information provided by the author’s office, “California is experiencing an affordable housing crisis. In fact, California ranks third in the nation in housing affordability. In most of the nation, families earning \$41,000 a year can afford the cost of a median-priced home (\$139,000). In California, the median-priced home exceeds \$251,000. Given that 52 percent of California’s households

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have an income of less than \$50,000, affordable housing is not possible for many communities with families on low and fixed incomes.”

2. **This bill does not narrow the type of “special tax” that could be imposed.** This bill provides that a local government may impose “any special tax” as long such tax is used for specific purposes (i.e., transportation projects and services, acquisition of open-space land, financial incentives for the construction of affordable housing, and transportation enhancement activities). The problem with using “any special tax” is that it does not define the type of tax being imposed (e.g., Bradley-Burns local sales and use taxes, transactions (sales) and use taxes). It is recommended that the bill clarify what type of tax is being imposed.
3. **This bill could change the voter approval requirement for local taxes.** This bill would amend the state Constitution to require a majority vote to pass or extend special taxes. Several local transactions and use taxes had been initially passed by a majority vote, but subsequent court decisions required two-thirds voter approval. This Constitutional amendment must be approved by a majority of California voters before the new voter-approval threshold could go into effect.
4. **Related Legislation.** SCA 5 (Torlakson) would authorize local governments to impose a transactions and use tax for transportation funding with the approval of a majority of the voters. The Board voted to oppose SCA 5.

COST ESTIMATE

This bill by itself would not result in additional costs to the Board. Under the Uniform Local Sales and Use Tax Law and the Transactions and Use Tax Law, counties are required to contract with the Board, and reimburse the Board for its preparation costs to administer the ordinance as well as the costs for the Board’s ongoing services in actually administering the ordinance.

REVENUE ESTIMATE

To the extent that this bill makes it easier for local governments to impose or extend local taxes, this bill, if approved statewide, would increase local government revenues. The revenue impact would be specific to each local government that approved a tax.

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